

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

LOCAL 8027, AFT-NEW HAMPSHIRE, AFL-CIO, RYAN)
RICHMAN, JOHN DUBE and JOCEYLN MERRILL,)
teachers in the New Hampshire Public Schools, and)
KIMBERLY GREEN ELLIOTT and MEGHAN EVELYN)
DURDEN, parents or guardians of children in the New)
Hampshire public schools.)

Plaintiffs,)

v.)

FRANK EDELBLUT, in his Official Capacity as)
Commissioner of the DEPARTMENT OF EDUCATION,)
CHRISTIAN KIM in his Official Capacity as the Chair of the)
NEW HAMPSHIRE COMMISSION ON HUMAN RIGHTS,)
and JOHN FOMELLA in his Official Capacity as)
ATTORNEY GENERAL of the State of New Hampshire.)

Defendants.)

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ANDRES MEJIA,)
CHRISTINA KIM PHILIBOTTE, and)
NATIONAL EDUCATION ASSOCIATION-NEW)
HAMPSHIRE,)

Plaintiffs,)

v.)

FRANK EDELBLUT, in his official capacity only as the)
Commissioner of the New Hampshire Department of)
Education,)

JOHN M. FORMELLA, in his official capacity only as the)
Attorney General of the State of New Hampshire,)

AHNI MALACHI, in her official capacity only as the)
Executive Director of the New Hampshire Commission for)
Human Rights,)

CHRISTIAN KIM, in his official capacity)
only as the Chair of the New Hampshire Commission for)
Human Rights,)

KEN MERRIFIELD, in his official capacity only as the)
Commissioner of the Department of Labor,)

Defendants.)

Civil No. 1:21-cv-01077-PB

**PLAINTIFFS' JOINT
MOTION FOR SUMMARY JUDGMENT**

Plaintiffs in the first above-captioned action (the “AFT Plaintiffs” or the “AFT Action”) and Plaintiffs in the second above-captioned action (the “Mejia Plaintiffs” or “Mejia Action”) each filed separate complaints in this consolidated case challenging the provisions of Sections 297 and 298 of 2021 House Bill 2 (“HB2”), codified at N.H. Rev. Stat. Ann. (“RSA”) 354-A:29-:34 and RSA 193:40. These provisions were enacted on June 25, 2021 and ban teaching, instructing, inculcating, or compelling a student to express belief in (or support for) four concepts in public schools and places of public employment. They are herein referred to as the “Amendments” and are attached, along with Plaintiffs’ other exhibits, as Ex. 1 (Depo. Ex. 1) to Plaintiffs’ contemporaneously-filed Statement of Undisputed Facts and the accompanying declaration of Attorney Gilles Bissonnette.

In its January 12, 2023 Memorandum and Order, this Court denied Defendants’ Motion to Dismiss both Complaints, ruling that the Amendments’ vague terminology, the lack of a scienter requirement, and the possibility that teachers could be found to violate the law (and potentially lose their teaching license) for teaching a banned concept solely by implication left “both teachers and enforcers to guess at what speech the amendments prohibit.” *Local 8027 v. Edelblut*, No. 21-cv-1077-PB, 2023 DNH 005, 2023 U.S. Dist. LEXIS 5593, at *50 (D.N.H. Jan. 12, 2023). This Court also found that the AFT Plaintiffs sufficiently pled a plausible First Amendment violation based on the Amendments’ exceedingly broad application prohibiting speech in all extracurricular activities, including in the school hallway, schoolyard, lunchroom, library, and even beyond school grounds. *Id.* at *22

Plaintiffs now file this Motion for Summary Judgment as to (i) the Fourteenth Amendment’s procedural due process/vagueness claim alleged in Counts I and II of the AFT Action and in Count I of the Mejia Action and (ii) the First Amendment’s freedom of speech claim

alleged in Count III of the AFT Action given the Amendments' impact on educators' private, extracurricular speech.¹

Plaintiffs refer this Court to the attached consolidated memorandum of law in support of this Motion for Summary Judgment. An unredacted version of this memorandum has been provisionally filed under seal. A redacted version of this memorandum will be filed publicly.

In a separate contemporaneous filing, Plaintiffs have submitted their Statement of Undisputed Facts under Local Rule 56.1 and a declaration of Attorney Gilles Bissonnette authenticating the relevant testimony and documents in this case. An unredacted version of this Statement of Facts has been provisionally filed under seal. A redacted version of this Statement will be filed publicly.

WHEREFORE, Plaintiffs respectfully request that this Court

A. Grant Plaintiffs' Motion for Summary Judgment, and enter summary judgment in their favor as to (i) the Fourteenth Amendment's procedural due process claim alleged in Counts I and II of the AFT Action and in Count I of the Mejia Action and (ii) the First Amendment's freedom of speech claim alleged in Count III of the AFT Action given the Amendments' impact on the extracurricular speech of educators;

B. Deny Defendants' Motion for Summary Judgment; and

C. Grant any other relief that is just or equitable.

¹ As to Count IV of the AFT Action, this Court concluded (and we accordingly assume here) that this Count encompasses the relief requested in Counts I-III of the AFT Action. *See* Sept. 14, 2022 Motion to Dismiss Hearing Transcript (Docket No. 55) at 2:19-23.

August 14, 2023

Respectfully Submitted,

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